

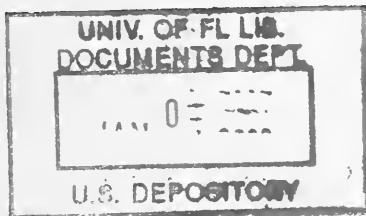
NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION

FOR THE

EXCELSIOR AND EXCELSIOR PRODUCTS INDUSTRY

AS APPROVED ON APRIL 3, 1935



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Approved Code No. 146—Amendment No. 2

AMENDMENT TO CODE OF FAIR COMPETITION
FOR THE

EXCELSIOR AND EXCELSIOR PRODUCTS
INDUSTRY

As Approved on April 3, 1935

ORDER

APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR THE
EXCELSIOR AND EXCELSIOR PRODUCTS INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of an Amendment to the Code of Fair Competition for the Excelsior and Excelsior Products Industry, and hearings having been duly held thereon and due consideration having been given with respect thereto, and the annexed report of the Assistant Deputy Administrator on said Amendment, containing findings and recommendation with respect thereto, having been made and directed to the National Industrial Recovery Board:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6359, dated September 27, 1934, and otherwise, does hereby approve and adopt said report, recommendation and findings and does further find that said Amendment and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that said Amendment annexed hereto be and it is hereby approved, and that the previous approval of said Code is hereby amended to include an approval of said Code in its entirety as amended.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

Approval recommended:

W. P. ELLIS,
Division Administrator.

WASHINGTON, D. C.,
April 3, 1935.

REPORT TO THE NATIONAL INDUSTRIAL RECOVERY BOARD

NATIONAL INDUSTRIAL RECOVERY BOARD,

National Recovery Administration, Washington, D. C.

GENTLEMEN: I transmit herewith a proposed Amendment to Article VII of the Code of Fair Competition for the Excelsior and Ex-celsior Products Industry. This Amendment is partially described as follows:

DESCRIPTION OF AMENDMENT

This Amendment will delete Article VII, Rule 11. However, the provisions of the deleted rule are included in the new Rule 11 which it is proposed to substitute.

The Amendment will require that any manufacturer of Industry products shall mark any such product, prior to selling it or offering it for sale, with his name and address or symbol and symbol number; such symbol first having been registered with the Code Authority, and a symbol number having been assigned the manufacturer by the Code Authority. The Amendment also provides that the manufacturer shall not substitute the name and address or trade mark of a distributor or jobber or any other party for his name and address or symbol and symbol number. This, however, does not prohibit the use of the distributor's name or trademark in addition to the name and address or symbol and symbol number of the manufacturer.

APPLICATION, REPRESENTATION AND CONSENT

The Code Authority in a letter from the Executive Officer, dated November 24, 1934, submitted this proposed Amendment. A Public Hearing on this and other Amendments was held on January 10, 1935, in the Carlton Hotel, Washington, D. C. Pursuant to points discussed at the Public Hearing the wording of the Amendment was revised for the purposes of clarification and consistency. In this revised form the amendment was submitted to each member of the Industry and the result of the ballot taken shows a majority of the Industry in favor of the Amendment. Of the fifty members of the Industry who replied to the ballot, thirty-four were in favor of the Amendment, fifteen were opposed and one member stated he was not entitled to vote by reason of not having paid Code fees. On the basis of volume of sales for 1934, 72% of the Industry voted in favor of the Amendment, 10% were opposed to the Amendment and 18% did not vote. Some slight additions subsequently suggested by the Advisory Boards have been included in the Amendment as now submitted but these have in no way affected the meaning of the text.

OPPORTUNITY TO BE HEARD ACCORDED TO PERSONS ENGAGED IN OTHER STEPS OF THE ECONOMIC PROCESS

Notice of Hearing No. 171-A was published on December 21, 1934, and afforded an opportunity to persons or groups who could show a substantial interest in the effect of the provisions of this Amendment to be heard either in person or by duly appointed representative either by appearance or by sending a written or telegraphic statement, in full accordance with Executive Order No. 6527, dated December 21, 1933. This Amendment was issued with Notice of Hearing No. 171-A and subsequent revisions have not changed the effect of the provisions in any respect. Pursuant to the Notice of Hearing No. 171-A two protests were received from distributors. These protests indicated the protestants believed the Amendment under consideration would prevent the marking on Industry products of the name and address or trade mark of distributors, jobbers or dealers. Explanation was made to the protestants that this Amendment would only require the manufacturer to mark his product with his name and address or symbol and symbol number and would not prevent additionally marking the product with the name and address or trade mark of the distributor, jobber or dealer. In reply to this explanation one of the protestants wrote, in part as follows:

"We see no harm, in fact, we think it is a good idea for every manufacturer to have an identifying symbol on the excelsior which they manufacture. We see no possible objection to it. We are glad to see that your thoughts are the same as ours, namely, that a manufacturer's symbol being stamped on the product would not preclude the use of our trade mark."

CONSIDERATION BY THE NATIONAL RECOVERY ADMINISTRATION

This Amendment has been considered by the several Advisory Boards and Divisions of the National Recovery Administration in the manner and to the extent required under the Office Manual.

The Amendment is designed to eliminate an unfair competitive practice. The Code requires that Industry products must have the grade visibly marked thereon by the manufacturer when sold or offered for sale and prohibits false grade marking. Grade Standards and Classifications of Industry products, as provided in the Code, have been approved for this Industry. These Grade Standards and Classifications of Industry products specify the requirements for the various grades of Industry products and, in addition, contain a provision requiring sterilization of certain classes of material utilized in the manufacture of paper excelsior. This Amendment provides a means of identifying the manufacturer of an Industry product after such product has left his hands, and thereby provides a means of enforcing the Code requirement that Industry products be marked with their correct grade as provided in the Grade Standards and Classifications of Industry Products and the requirement that certain grades of paper shall be sterilized prior to being manufactured into paper excelsior.

The Amendment is not designed to promote, and does not effect, any monopoly or monopolistic practice, nor does it discriminate against small enterprises. This Amendment will promote the organization of Industry and will induce united action, thereby removing obstruction to, and preventing obstruction to, the free flow of interstate commerce and does also thereby provide for the general welfare. It applies to, and benefits, all members of the Industry equally. The Code as amended complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof.

RECOMMENDATION

On the basis of all the facts stated above and the Administrative findings of law and facts made above, I recommend that this Amendment be approved.

Respectfully,

W. JENNINGS BUTTS,
Assistant Deputy Administrator.

The findings and recommendation made above are concurred in by:

A. C. DIXON,
Deputy Administrator.

W. P. ELLIS,
Division Administrator.

MARCH 23, 1935.

AMENDMENT TO CODE OF FAIR COMPETITION FOR
THE EXCELSIOR AND EXCELSIOR PRODUCTS IN-
DUSTRY

Delete Article VII, Rule 11, and substitute in lieu thereof the following:

RULE 11. *Marking or Branding.*—(a) No member of the Industry shall sell or offer to sell any product of this Industry without clearly stating in the marking visible thereon or upon the package thereof, the grade and the name and address or symbol and symbol number of the manufacturer. No member of the Industry shall substitute for his or its name and address or symbol the name and address or trade-mark of any distributor or jobber or any other party who is not the actual manufacturer of the product marked.

(b) Any member of the Industry may use a symbol and symbol number in place of his name and address provided that such symbol shall first have been registered with the Code Authority. If prior to receiving an application from a member of the Industry for the registration of such a symbol, the Code Authority has had registered with it a symbol of any other member of the Industry which is so similar to that of the applicant as to cause applicant's symbol to tend to be deceptive or misleading, the Code Authority shall so notify the applicant and the applicant shall withdraw or revise his or its symbol. Each member of the Industry shall be given a number for his symbol and thereafter shall mark his or its products of this Industry with both his or its registered symbol and number.

(c) Any member of the Industry may use a trade-mark as a symbol provided that such trade-mark has been registered with the Code Authority as a symbol in conformity with the foregoing provisions of this section.

Approved Code No. 146—Amendment No. 2.
Registry No. 310-02.

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